REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

COSMOS BOTTLING CORP., *Petitioner,*	**C.T.A. AC NO. 7**
	Members:
-versus-	CASTAÑEDA, JR., Chairman UY, and PALANCA-ENRIQUEZ, JJ.
MS. LIBERTY TOLEDO, in her official capacity as the City Treasurer of Manila, and the CITY OF MANILA, *Respondents.*	**Promulgated:** OCT 28 2005

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition For Review filed by Cosmos Bottling Corp. (hereafter "petitioner") against Ms. Liberty Toledo, in her official capacity as the City Treasurer of Manila, and the City of Manila (hereafter "respondents") under *Section 9 (par. 1) of R.A. No. 9282* in relation to *Rule 42 of the 1997 Rules of Civil Procedure, as amended,* from the Resolution dated August 14, 2004 of the Regional Trial Court of

Mandaluyong City, Branch 212, in Civil Case No. MC04-2444 entitled "Cosmos Bottling Corp. vs. Ms. Liberty Toledo, in her official capacity as the City Treasurer of Manila and the City of Manila", the dispositive portion of which reads as follows:

> "WHEREFORE, in the light of the foregoing, Plaintiff's prayer for the issuance of a Temporary Restraining Order and a Writ of Preliminary Injunction and Writ of Prohibition is DENIED while defendants' Motion To Dismiss are GRANTED.
>
> SO ORDERED."

Petitioner filed a Motion For Reconsideration of the above Resolution, which was denied in the Resolution dated January 21, 2005.

THE FACTS

The facts are not in dispute.

Petitioner Cosmos Bottling Corp. is a domestic corporation duly incorporated existing under and by virtue of the laws of the Republic of the Philippines, with office address at SMPC Bldg., #7 Saint Francis Street, Ortigas Center, Mandaluyong City.

Ms. Liberty Toledo is the incumbent City Treasurer of the City of manila with office address at the Office of the City Treasurer, Manila City Hall, Manila.

The City of Manila is a public corporation, duly constituted under *Republic Act No. 409*, also known as the *Revised Charter of the City of Manila*.

On April 30, 2004, petitioner filed with the RTC of Mandaluyong City, Branch 212, a complaint for "Refund of Illegally/Erroneously Local Collected Business Tax, Cancellation of Assessment, Prohibition with Prayer to Issue TRO and Writ of Preliminary Injunction".

On May 20, 2004, defendant Liberty Toledo filed her "Answer with Motion To Dismiss".

On May 28, 2004, respondent City of Manila filed its "Answer with Motion To Dismiss".

On May 28, 2004, petitioner filed its "Opposition" to defendant Liberty Toledo's Motion To Dismiss.

On June 2, 2004, petitioner filed its "Opposition" to defendant City of Manila's Motion To Dismiss.

On June 17, 2004, petitioner filed its "Memorandum".

On July 2, 2004, respondent City of Manila filed its "Memorandum For Defendant City of Manila (In Support of its Answer with Motion To

Dismiss and Opposition For the Issuance of Temporary Restraining Order and Writ of Injunction)".

On August 12, 2004, the court a quo issued a Resolution granting the Motions To Dismiss and denying the prayer for the issuance of a Temporary Restraining Order and Writ of Preliminary Injunction.

Petitioner filed a "Motion For Reconsideration" of said Resolution dated August 12, 2004, which was denied in the Resolution dated January 21, 2005.

Hence, the present petition.

On August 7, 2005, this Court ordered respondents to comment (not to file a motion to dismiss) on the petition, within ten (10) days from notice.

On April 25, 2005, the respondent City Treasurer of Manila filed her Comment, and on April 25, 2005, respondent City of Manila filed its "Comment of the Respondent City of Manila To the Petition For Review".

On May 17, 2005, petitioner filed its Reply.

On July 7, 2005, We gave due course to the petition, and granted the parties thirty (30) days from notice to file their respective memoranda.

On August 12, 2005, respondent City Treasurer of Manila filed her "Memorandum For Respondent (City Treasurer of Manila)".

On September 5, 2005, petitioner filed its "Memorandum".

On September 12, 2005, respondent City of Manila filed her "Memorandum For the City of Manila".

On September 26, 2005, the case was considered submitted for decision.

ISSUES

The petition raises the following issues:

I

WHETHER OR NOT THE COURT A QUO COMMITTED REVERSIBLE ERROR IN DISMISSING PETITIONER'S COMPLAINT ON THE GROUND THAT MS. ACELIA Q. VELEÑA WAS NOT DULY AUTHORIZED TO REPRESENT THE PETITIONER.

II

WHETHER OR NOT PETITIONER'S MOTION FOR RECONSIDERATRION WAS PRO-FORMA.

III

WHETHER OR NOT THE IMPOSITION OF SECTION 21 OF THE REVISED REVENUE CODE OF MANILA UPON THE PLAINTIFF, IN ADDITION TO THE

BUSINESS TAX UNDER SECTION 14 OF THE SAME CODE, CONSTITUTES DIRECT DOUBLE TAXATION.

IV

WHETHER OR NOT MANILA CITY ORDINANCE NOS. 7988 AND 8011 ARE NULL AND VOID.

THE RULING OF THIS COURT

The petition is partly meritorious.

Whether Ms. Alicia Veleña
Is Duly Authorized To Sign
The Verification and Certification Of
Non-Forum Shopping
For And In Behalf of
Petitioner Corporation

Petitioner insists that a plain reading of the Secretary's Certificate clearly shows that Ms. Veleña is a Group C signatory and that a Group C signatory is empowered to represent the petitioner in all suits for or against the petitioner. It argues that the Secretary's Certificate is likewise very clear in providing that a Group C signatory, such as Ms. Veleña, may sign in behalf of the corporation in matter involving suits for or against the petitioner. It is therefore simply inconceivable for the court a quo to have concluded that nothing in the Secretary's Certificate "would

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allude that she (Ms. Veleña) is really authorized to act in behalf of the plaintiff".

On the other hand, respondent City Treasurer of Manila counterargues that the Verification and Certification of Non-Forum Shopping of the complaint is not sufficient in form and substance as there is no Resolution of the Board of Directors authorizing Ms. Veleña to sign the Verification and Certification against Forum Shopping. She further asseverates that a careful reading of the Secretary's Certificate will reveal that she was not duly authorized, as her name did not appear, nor was she specifically mentioned therein, but only "any one group, A, B, C, or F signatory" had been authorized. This authority refers to any of group A, B, C or F and not to Ms. Veleña. Hence, the complaint violated *Supreme Court Circular No. 28-91, as amended*, and should be dismissed.

Respondent City of Manila, on the other hand, contends that the Secretary's Certificate is not the correct document to be presented by the petitioner in order to show the alleged authority of Ms. Veleña. It argues that the Board Resolution is the proper document because it contained an embodiment of the specific authority being conferred by the petitioner to Ms. Veleña.

We rule for the petitioner.

The Secretary's Certificate in question reads as follows:

"SECRETARY'S CERTIFICATE

I, **ROSABEL T. BALAN**, of legal age, married, Filipino, with office address at San Miguel Corporation, No. 40 San Miguel Avenue, Mandaluyong City, Metro Manila, Philippines, after having been duly sworn in accordance with law, do hereby depose and state that:

1. I am the Assistant Corporate Secretary of **COSMOS BOTTLING CORPORATION** (the 'Corporation'), a corporation duly organized and registered in accordance with the laws of the Republic of the Philippines with principal office at 23rd Floor San Miguel Properties Center, St. Francis Ave., Mandaluyong City;

2. As Assistant Corporate Secretary of said Corporation, I have under my supervision and control the Minutes Book wherein are recorded all the minutes of the meetings of the Board of Directors;

3. At the Organizational Meeting of the Board of Directors of the Corporation held on **May 6, 2004**, the following resolutions were unanimously passed and approved:

> '**IX. AUTHORITY TO APPOINT AND DESIGNATE REPRESENTATIVE TO PROSECUTE, DEFEND, ARBITRATE, SETTLE AND/OR COLLECT**
>
> '**RESOLVED**, that any one group A, B, C, or F signatory be, as they hereby are, authorized and empowered to represent, act, negotiate, sign, conclude

and deliver for and in the name of the Corporation for the application, prosecution, defense, arbitration, conciliation, execution, collection, compromise or settlement of:

a) Any and all claims or suits for or against **Cosmos Bottling Corporation**, including but without in any manner restricting or limiting to, the acceptance of pledges, real estate or chattle mortgages, bonds or any forms of undertaking as collateral security for the payment of obligations to the Corporation, extension of credit; or any and all claims or suits for or against **Cosmos Bottling Corporation** arising from, or in connection with, any disputes involving any and all contracts, deeds or acts of whatever kind and nature where the Corporation is a party directly or indirectly and all disputes involving all acts and products of the Corporation; or

b) Any and all protests, claims or suits of the Corporation against any and all persons (natural or juridical), firms or entities, including but without in any manner restricting or limiting to forwarders, carriers, brokers, transportation or shipping insurance companies, agencies or any other party or entity involving, short, defective or erroneous delivery, consignment, transport or shipment of goods, wares, machineries or against any and all persons, firms or entities arising out of, or in connection with any kind of breach or violation of their contractual obligations with **Cosmos Bottling Corporation** including the Government of the Republic of the Philippines, its agencies or instrumentalities; or

c) Any and all claims, applications, negotiations, registrations, protests and the like relating to or arising from or in connection with all the intellectual property, trademarks, tradenames, service names, patents, licenses, copyrights and the like of **Cosmos Bottling Corporation**; or

d) Any and all claims and negotiations relating to or arising from the labor relations of the Corporation, including, but not limited to, collective bargaining agreements, labor conciliation, arbitration or negotiation and the like; or

e) Any and all foreclosures of properties mortgaged to the Corporation, judicial or extra-judicial, with authority to enter upon and take possession of the mortgaged properties, execute and sign deeds of sale in favor of the Corporation as attorneys-in-fact of the mortgagor(s), and to sell and dispose of the same to the highest bidder at public auction after the publication of notice in accordance with law; to execute and deliver, on behalf of **Cosmos Bottling Corporation** in its name and stead, in case of sale of the foreclosed properties to **Cosmos Bottling Corporation** after the expiration of the redemption period, or in the case of the waiver of such redemption period, such deeds, documents of conveyances or transfer as may be necessary for the purpose of vesting in **Cosmos Bottling Corporation** as purchaser of such full, complete and absolute title to the properties so sold.

RESOLVED, FURTHER, that any one Group A, B, D or F signatory be, as they are hereby, authorized to do and perform on behalf of the Company, whatever act such signatory may deem necessary, including but not limited to, causing the preparation and filing of pleadings, motions and other papers, verifying the same and the allegations therein, executing affidavits or sworn statements, giving testimonies, and making certifications against forum shopping in the cases (a), (b), (c), (d) and (e) mentioned above;

RESOLVED, FURTHER, that any one Group A, B, C, or F signatory be, as they are hereby, authorized and empowered to engage the services of, and designate and appoint as representatives, agents, or attorneys-in-fact of the Corporation, any individual, party, entity or firm for the application, prosecution, defense, arbitration, conciliation, execution, collection, compromise or settlement of (a), (b), (c), (d) and (e) mentioned above.

RESOLVED, FINALLY, that in connection with the foregoing powers and authority, the aforementioned authorized signatories of the Corporation be, as they are hereby, authorized to assign the enforcement of any of the causes of action or defense of the Corporation in favor of a trustee or plaintiff for collection or defense, and to designate, in writing, such lawyers or law firms to appear, act for, or otherwise represent the Corporation all judicial, quasi-judicial, administrative or arbitration board hearings, incidents and other proceedings, including, but without in any manner restricting or limiting to, all pre-trial conferences and to do any and all of the following acts and deeds:

a) To negotiate, conclude, enter into and execute a compromise or amicable settlement of the case or dispute;

b) To agree on the simplication of the issues;

c) To amend the pleadings;

d) To agree to stipulations or obtain admissions of facts and of documents to avoid unnecessary proofs;

e) To limit the number of witnesses;

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f) To undertake a preliminary reference of issues to a commissioner; and

g) To explore and/or consider alternatives modes of dispute resolution, such as but not limited to mediation proceedings;

h) To do and agree on such other matters as may aid the prompt disposition of the case or dispute."

4. Ms. Acelia Q. Velena is a Group C. signatory.

5. That there is no provision in the Charter or By-Laws of the said Corporation limiting the power of the Board of Directors to pass the foregoing resolutions, and that the same are in conformity with the provisions of said Charter and By-Laws.

IN WITNESS WHEREOF, I have hereunto signed these presents this 7th day of May 2004.

(SGD.) **ROSABEL T. BALAN**
Assistant Corporate Secretary"
(*Annex "H", Petition For Review*)

From the above quoted provisions of the Secretary's Certificate, it is clear that the Board of Directors has authorized any one of Groups A, B, C or F to represent the corporation in any and all suits for or against Cosmos Bottling Corp. in disputes involving the acts and products of the corporation. As the records show, this case arose from an assessment of taxes imposed upon petitioner's act of doing business within the City of

Manila. And *paragraph 4* of the Secretary's Certificate clearly states that "Ms. Acelia Q. Velena is a group C signatory".

It is likewise clear in the Secretary's Certificate that a Group C signatory, such as Ms. Veleña, was duly authorized to sign on behalf of the corporation in matters involving suits for or against the corporation.

Pursuant to said written authority, Ms. Veleña duly executed the verification and certification of non-forum shopping. Petitioner, therefore, has complied with the rules on verification and forum shopping, as laid out in *Sections 4 and 5 of Rule 7 of the 1997 Rules of Civil Procedure, as amended.*

The court a quo therefore erred in dismissing the complaint on the ground that there is nowhere in the Secretary's Certificate that specifically authorized Ms. Veleña to sign the verification and certification of non-forum shopping on behalf of the petitioner.

It bears stressing that while the requirements as to certificate of non-forum shopping is mandatory, nonetheless the requirements must not be interpreted too literally and thus defeat the objective of presenting the undesirable practice of forum shopping (*Bernardo vs. NLRC, 255 SCRA 108, 117*).

Finally, We stress that technical rules of procedure should be used to promote, not frustrate, justice (*Cusi-Hernandez vs. Diaz, 336 SCRA 113*). While the swift unclogging of court dockets is a laudable objective, the granting of substantial justice is an even more urgent ideal (*BA Savings Bank vs. Sia, 336 SCRA 490*). *Circular No. 28-91* was designed to serve as an instrument to promote and facilitate the orderly administration of justice and shall not be interpreted with absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules or procedure which is to achieve substantial justice as expeditiously as possible (*Dar vs. Alonzo-Legasto, 339 SCRA 306*).

Denial of the Application For a Temporary Restraining Order And Writ of Preliminary Injunction

In denying the application for a Temporary Restraining Order and Writ of Preliminary Injunction, the court a quo ruled:

> "With regard to the issuance of the temporary restraining order and/or writ of preliminary injunction, the Court sees no urgency to grant the same because what the Plaintiff seeks to enjoin the Defendant is for the latter to refrain from making assessment, implementation and collection of local business taxes under Sections 14 to 20 and of Section 21 of the Revised Revenue Code of Manila, as amended by Ordinances Number 7988 and 8011. Since

In conclusion, the petitioner, as resident foreign corporation engaged in trade or business in the Philippines on account of its sale of passage documents here in the Philippines, is not taxable on its Gross Philippine Billings as provided in Section 28(A)(3)(a) of the NIRC. However, it is still liable for income tax not at the rate of 32% as generally imposed on resident foreign corporations, but at the lower rate of 1½% pursuant to the RP-New Zealand Tax Treaty on the profits derived from sources within the Philippines. Since petitioner already paid its income tax liabilities for taxable year 2002 at the rate of 1½% of gross income, the payment is correct and therefore no refundable amount is due.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division

the Supreme Court decision on the case of City of Manila, et al., vs. Hon. Hernando Perez, et al., involving the illegality of Ordinance No. 8011 has not yet attain finality, said ordinance continues to be valid and legal and Defendants can continue to enforce its implementation.

As to the refund and cancellation of assessment of the first quarter of 2004, the Court finds no reason to grant the plaintiff's prayer for TRO and or injunction since assessment made under Sections 14 and 21 of the Ordinance as found by this Court does not constitute double taxation and hence, lawful.

In the light of the foregoing, in the absence of evidence that will prove arbitraries or (sic) the part of defendants' act of enforcing Section 14 and Section 21 of City Ordinance 7794, as amended, issuance of a Writ of Prohibition cannot be granted.

Taxes being the lifeblood of the nation, they should be collected without unnecessary hindrance and should be made in accordance with law."

Even assuming, therefore, that the Resolution of the Supreme Court in the case of *City of Manila, et al. vs. Hon. Hernando Perez, et al., G.R. No. 157490, June 23, 2003*, involving the illegality of Ordinance No. 8011 has already attained finality, the court a quo, however, in denying the application for a Temporary Restraining Order and Writ of Preliminary Injunction, gave other valid reasons in the assailed Resolution dated August 14, 2004, as quoted above.

The issuance of a writ of preliminary injunction is addressed to the sound discretion of the court, conditioned on the existence of a clear and positive right of the movant which should be protected. It is an extraordinary peremptory remedy available only on the grounds expressly provided by law, specifically *Section 3 of Rule 58 of the 1997 Rules of Civil Procedure, as amended* (*Valley Trading Co., Inc. vs. Court of First Instance of Isabela, et al., 171 SCRA 501*). In the issuance thereof, the courts are given sufficient discretion to determine the necessity for the grant of the relief prayed for, as it affects the respective rights of the parties with the caveat that extreme caution be observed in the exercise of such discretion (*Bataclan, et al. vs. Court of Appeals, et al., 175 SCRA 764*).

It is also a settled rule that the issuance of the writ of preliminary injunction as an ancillary or preventive remedy to secure the rights of a party in a pending case is entirely within the discretion of the court taking cognizance of the case, the only limitation being that this discretion should be exercised based upon the grounds and in the manner provided by law. The exercise of sound judicial discretion by the lower court in injunctive matters should not be interfered with except in cases of manifest abuse (*Detective and Protective Bureau, Inc. vs. Cloribel, 26 SCRA 255;*

Lopez vs. Court of Appeals, 322 SCRA 686), none of which has been shown in this case. We, therefore, sustain the denial by the court a quo of the prayer for a Temporary Restraining Order and Writ of Preliminary Injunction.

The foregoing conclusion makes it unnecessary for Us to pass on the other issues raised in this case by petitioner.

WHEREFORE, premises considered, the Petition is hereby **PARTIALLY GRANTED** and the appealed Resolution, dated August 12, 2004, denying the prayer for a Temporary Restraining Order and Writ of Preliminary Injunction is **AFFIRMED**. While the dismissal of Civil Case No. MC04-2444 is **REVERSED** and **SET ASIDE**, and said case is **REINSTATED**. The court a quo is directed to continue the proceedings in said Civil Case No. MC04-2444, with dispatch.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice